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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

HUMBERTO AVALOS, as Conservator, etc. et al.,

Plaintiffs and Appellants,

v.

DAVID SCOTT CANO,

Defendant and Respondent.

H038291
(Santa Clara County
Super. Ct. No. 1-10-CV-169535)

I. INTRODUCTION

This appeal arises from a series of car accidents that occurred on Interstate 280 in the early morning hours of Sunday, February 22, 2009, resulting in the death of Mauro Avalos Garcia. Garcia's estate and his parents filed wrongful death actions against two of the drivers involved in the collisions—Diana Yi and David Scott Cano—alleging their negligence caused Garcia's death. Following a seven-day trial, the jury found that neither defendant was liable. The jury determined that defendant Yi was negligent, but that her negligence was not a substantial factor in causing Garcia's death, and that defendant Cano was not negligent.

On appeal, plaintiffs seek to have the judgment reversed on the grounds that (1) the evidence was insufficient to support the jury's finding that defendant Cano was not negligent; (2) the jury failed to follow the court's negligence per se instruction; (3) the trial court erred by excluding photographs of Garcia's body at the accident scene;

(4) the trial court erred by excluding videos depicting experiments carried out by plaintiffs' reconstruction expert; and (5) the trial court erred by striking certain testimony on hearsay grounds. Defendant Yi is not a party to this appeal. For the reasons stated below, we find no merit in plaintiffs' contentions and we will affirm the judgment.

II. BACKGROUND

Our summary of the facts is taken from the reporter's transcript and the portions of the written record contained in the parties' appendices.

A. The Cavalier Collision

At approximately 2:00 a.m. on February 22, 2009, Garcia's Chevrolet Cavalier collided with the sound wall bordering the right shoulder of southbound I-280 near the Winchester exit. Garcia's vehicle came to rest in the far right lane, known as lane number five, facing southbound.[1] There were no street lights on the stretch of I-280 where Garcia's vehicle stopped and, as a result of the crash, its headlights stopped functioning.

The cause of Garcia's solo crash was not determined, although alcohol may have been a factor. Joseph O'Hara, M.D., the medical examiner who performed Garcia's autopsy, testified that Garcia had "acute alcohol intoxication" at the time of his death, as evidenced by a blood-alcohol level of 0.25 percent, well over the 0.08 percent legal limit.

B. The Honda-Cavalier-Garcia Collision

Shortly after 2:00 a.m., Yi got on southbound I-280 in her black Honda Civic. She was coming from a party where she drank two glasses of wine and a mixed drink. Her blood-alcohol level was later found to be 0.161 percent, twice the legal limit.

[1] At trial, the highway lanes were referred to by number, with lane number one being the far left lane, lane number two being the lane to the right of lane one, and so on. As noted, the far right lane is referred to as lane number five. We continue that practice here.

Yi was driving in lane number five at about 65 miles per hour with her low beam headlights illuminated. Her windshield wipers were also on because it was raining. Yi did not see Garcia's vehicle in the lane ahead of her until about a second before impact. In that second, she tried to avoid the vehicle by slamming on her brakes and swerving to the left.

Yi's vehicle nevertheless hit Garcia's vehicle and Garcia himself, who had exited his vehicle and was standing behind it. The crash sent Garcia's vehicle spinning southward approximately 57 feet. It came to rest on the right shoulder facing northward, towards oncoming traffic. Yi's vehicle traveled south for about 300 feet after the collision before coming to rest in southbound lane number four, its headlights and taillights no longer illuminated. Garcia's body came to rest in lane number five, approximately 57 feet north of his vehicle and approximately 260 feet north of Yi's vehicle. Thus, oncoming southbound traffic would encounter Garcia's body in the number five lane before encountering either of the disabled vehicles.

C. The Scion-Garcia Collision

A short time later, Cano was driving southbound on the same stretch of I-280 in his white Scion XB. He had consumed a shot of alcohol and a beer earlier in the night, but he later passed all field sobriety tests.

Prior to the accident, Cano was driving about 70 miles per hour in a slight rain with his low beams on. Traffic was light, and he was not following behind any vehicles in the minute before the accident. When asked whether, prior to the accident, he could see the "median . . . separat[ing] the northbound traffic from the southbound traffic," Cano responded "I guess my peripheral vision, no." Cano testified that he was traveling in the number three or number four lane when he noticed a dark silhouette to the left in the freeway ahead of him. He was planning to get off the freeway at the next exit, and therefore he merged right into lane number five after turning his head to check his blind spot. At some point thereafter—though it is not clear how long—Cano drove over

something in the number five lane. He never saw the object, and did not learn until later that it was Garcia's body.

Dr. Matthew Smith was an eyewitness to the Scion-Garcia collision. Smith was travelling south on I-280 in the vicinity of the accidents at approximately the same time as Cano. Smith was driving with his low beam headlights on when he noticed shadowy figures in the center and at the far right of the freeway. He slowed down and merged left into lane number one. As he approached the accident scene, Smith saw a person in the roadway. As Smith drove by the scene, he saw what he described as a white Suburban or SUV run over the body.

D. The Acura-Honda Collision

The final crash of the evening occurred minutes later, when an Acura driven by Robert Hennings collided with Yi's vehicle.

E. Accident Reconstruction and Cause of Death Testimony

Dr. O'Hara, the medical examiner, testified for plaintiffs that the cause of death was "multiple blunt force [crush] injuries with skull fracture." The injuries to Garcia included fractures to the lower legs and an open skull fracture consistent with a crush injury. Dr. O'Hara testified that the skull injury, likely sustained when a tire rolled over Garcia's head, would have been "immediately lethal." However, Dr. O'Hara was unable to determine whether Garcia's death was caused by being struck by the first vehicle, being run over by the second vehicle, or a combination of the two. As noted above, Dr. O'Hara concluded that Garcia had a blood-alcohol level of 0.25 percent at the time of his death, which Dr. O'Hara characterized as "acute alcohol intoxication."

David Yoshida, Ph.D., Cano's accident reconstruction expert, testified that during the collision with Yi, Garcia's head struck the Honda's A-pillar, which runs along the side of the windshield. Laura Liptai, Ph.D., Cano's expert biomedical engineer, agreed that Garcia's head struck the Honda's A-pillar and concluded that impact likely was fatal.

Plaintiffs' accident reconstruction expert, Albert Ferrari, similarly stated at his deposition that the damage to the Honda's A-pillar was caused by the impact with Garcia. However, at trial he testified that he had since noted additional damage to a metal component of the Honda's A-pillar that was "not consistent with . . . impact with a human being." Ferrari could not, however, rule out that the A-pillar damage was caused by Garcia. He opined that Garcia's collision with Yi's vehicle was "more of a glancing blow than a square hit like a head-on collision." Ferrari described photographs of the accident scene showing the condition of Garcia's remains following the accidents.

F. Expert Testimony Regarding Visibility and Reaction Times

Low beam headlights illuminate objects that are between 100 and 150 feet away, while high beams increase visibility to 500 feet. It takes the average person one and a half seconds to perceive and react. Therefore, as plaintiffs' accident reconstruction expert Ferrari testified, a driver traveling at highway speeds will not have time to avoid an object that is first illuminated by his or her low beam headlights.

Yi's vision and human factors expert, Robert Post, Ph.D., agreed, testifying that even if Cano saw Garcia from 100 or 130 feet away—as illuminated by low beam headlights—Cano could not have reacted in time to avoid Garcia. Dr. Post noted that Garcia would have been visible from further away to a driver using high beams.[2] He also opined that, because Cano never saw Garcia at all, Cano may have been checking his blind spot when Garcia was illuminated by the low beams.

Based on Cano's testimony, Ferrari concluded that Cano was 400 feet from Garcia when he first saw Yi's vehicle. According to Ferrari, had Cano turned on his high beam

[2] Plaintiffs incorrectly state that Dr. Post testified Cano would have been able to see the reflector lights on Garcia's disabled vehicle from 800 feet away. To the contrary, Dr. Post stated that Cano could *not* have seen the retroreflectors on the back of Garcia's vehicle because the vehicle was facing north, with its taillights (and the associated retroreflectors) pointed away from Cano as he approached. Ferrari, plaintiffs' own expert, agreed.

headlights when he perceived Yi's vehicle, he would have seen Garcia and been able to avoid hitting him.

G. Procedural History

The complaint asserted negligence and wrongful death causes of action against Yi, Cano, and Hennings, who was later dismissed.

The matter was submitted to the jury following a seven-day trial. The jury rendered a verdict in which it found (1) Yi was negligent, but her negligence was not a substantial factor in causing Garcia's death; and (2) Cano was not negligent. Judgment was entered on March 14, 2012, and plaintiffs filed a timely notice of appeal on May 11, 2012.

III. DISCUSSION

Plaintiffs advance two primary arguments on appeal. First, they challenge the jury's finding that Cano was not negligent. Second, they maintain that the trial court improperly excluded certain evidence and testimony. Neither challenge has merit.

A. The Jury Verdict Challenge

1. The Nature of the Challenge and the Standard of Review

Plaintiffs contend that Cano was negligent per se because he failed to use his high beam headlights on the night of the accident, which they maintain Vehicle Code section 24409[3] required him to do.

The negligence per se doctrine creates a presumption of negligence if four elements are established: "(1) the defendant violated a statute; (2) the violation proximately caused the plaintiff's injury; (3) the injury resulted from the kind of occurrence the statute was designed to prevent; and (4) the plaintiff was one of the class of persons the statute was intended to protect." (*Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.* (2010) 190 Cal.App.4th 1502, 1526.) The first two elements are

[3] All further statutory references are to the Vehicle Code unless otherwise indicated.

questions for the trier of fact (*ibid.*), on which the plaintiff bears the burden of proof. (*Nat'l Council Against Health Fraud, Inc. v. King Bio Pharms., Inc.* (2003) 107 Cal.App.4th 1336, 1347 (*Nat'l Council*).)

The legal basis for plaintiffs' challenge to the jury's finding that Cano was not negligent is somewhat unclear. Plaintiffs argue that the "jury's verdict was against the weight of the evidence," signifying a substantial evidence challenge. But they also claim the jury disregarded the court's instruction on negligence per se, suggesting an argument that the verdict is against the law.[4] (*Kaiser Cement & Gypsum Corp. v. Allis-Chalmers Mfg. Co.* (1973) 35 Cal.App.3d 948, 958 (*Kaiser*) ["A verdict is 'against the law' when it is contrary to the instructions given the jury"].) While plaintiffs conflate the two challenges, they are distinct. (*Ibid.*; see also *Hawkinson v. Oesdean* (1943) 61 Cal.App.2d 712, 716 ["An order granting a new trial on the ground that the verdict is against law cannot be sustained by merely showing that it is unsupported by the evidence"].)

The evidence is said to be "insufficient to justify the decision . . . [where] there is an absence of evidence or . . . the evidence received is lacking in probative force to establish the proposition of fact to which it is addressed." (*Renfer v. Skaggs* (1950) 96 Cal.App.2d 380, 383.) By contrast, a verdict is inconsistent with "an instruction only when the evidence on a point covered by the instruction is without conflict and fails to show a set of facts, which under the instruction, would warrant the verdict reached." (*Kaiser*, *supra*, 35 Cal.App.3d at p. 958.) In other words, a verdict is against the law where the evidence is uncontradicted and compels a result contrary to the verdict.

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[4] Plaintiffs also refer to "instructional error" and set forth the standard for reversing a judgment for erroneous jury instructions. But they advance no argument that the jury instructions were incorrect. Rather, the substance of their argument is that the jury did not follow one of those instructions. Therefore, we do not consider the propriety of the instructions. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119 (*Berger*) ["Nor is an appellate court required to consider alleged error where the appellant merely complains of it without pertinent argument"].)

To the extent plaintiffs argue the verdict is unsupported by substantial evidence, they purport to challenge the sufficiency of the evidence establishing that Cano was not negligent. However, as this court explained in *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528, the substantial evidence test "is typically implicated when a defendant contends that the plaintiff succeeded at trial in spite of insufficient evidence." By contrast, where "the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment." (*Ibid.*)

Here, *plaintiffs* bore the burden to prove Cano was negligent per se—meaning he violated section 24409 and his violation caused Garcia's death. (*Nat'l Council*, *supra*, 107 Cal.App.4th at p. 1347.) Because Cano had no burden to present evidence showing his lack of negligence, the jury's no-negligence verdict indicates a failure of proof by plaintiffs.

In these circumstances, the proper inquiry on appeal is "whether the evidence compels a finding in favor of [plaintiffs] as a matter of law." (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.) "Specifically, the question [is] whether [plaintiffs'] evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' [Citation.]" (*Ibid.*) That standard mirrors the one we apply where the verdict is challenged as contrary to a jury instruction. (*Kaiser*, *supra*, 35 Cal.App.3d at p. 958.) Thus, regardless of how plaintiffs' challenge is characterized, the question before us is whether there was uncontradicted evidence compelling a finding that Cano was negligent per se because he violated section 24409 and that violation caused Garcia's death.

2. The Alleged Statutory Violation

Section 24409 requires the use of headlights "directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle," subject to the limitation that low beams be used whenever the driver of a

vehicle "approaches an oncoming vehicle within 500 feet" or "follows another vehicle within 300 feet to the rear."[5]

Plaintiffs argue that section 24409 required Cano to have his high beams on because only high beams were sufficient "to reveal persons and vehicles at a safe distance in advance of the vehicle," and other vehicles were not close enough to require the use of low beams. In support of that contention, plaintiffs point to Cano's testimony that it was raining, the highway had poor lighting conditions, and he was not following behind any vehicles in the minute before the accident. Cano responds that the jury reasonably could have found that section 24409 did not require the use of high beams for various reasons, including the proximity of other vehicles, the nature of highway driving (in which vehicles are frequently encountered), or because low beams were "sufficient" within the meaning of the statute. (§ 24409.)

We conclude that there was not uncontradicted evidence compelling a finding that section 24409 required Cano to use high beams. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.) Even assuming high beams were necessary to reveal persons and vehicles at a safe distance, the evidence regarding the proximity of other vehicles was not conclusive. No evidence was submitted as to whether or not oncoming traffic was within 500 feet of Cano's vehicle immediately before the accident. Plaintiffs purport to rely on Cano's testimony that he could not see oncoming traffic on the other side of the freeway. But Cano's testimony was that he could not see the median separating the northbound lanes

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[5] Section 24409 provides in full: "Whenever a motor vehicle is being operated during darkness, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations: [¶] (a) Whenever the driver of a vehicle approaches an oncoming vehicle within 500 feet, he shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver. [¶] The lowermost distribution of light specified in this article shall be deemed to avoid glare at all times regardless of road contour. [¶] (b) Whenever the driver of a vehicle follows another vehicle within 300 feet to the rear, he shall use the lowermost distribution of light specified in this article."

from the southbound ones; he did not testify to the presence or visibility of oncoming traffic. And, although Cano testified that he was not following behind any vehicles in the minute before the accident, the jury could reasonably find that testimony insufficient to establish there were no vehicles within 300 feet—the length of a football field—ahead of Cano.

Accordingly, we conclude that the jury was not required, as a matter of law, to find Cano violated section 24409.

3. Causation

Even assuming Cano violated section 24409, we determine the evidence did not compel a finding that the violation caused Garcia's death as a matter of law.

Plaintiffs contend that—in light of its verdict that Yi's negligence did not cause Garcia's death—the jury was required to find that Cano was the cause. In support of their contention that Cano's failure to use his high beams caused Garcia's death, plaintiffs point to Ferrari's testimony that Cano would have seen Garcia if he had used his high beams.

Cano responds that the jury was not required to find that any statutory violation caused Garcia's death because they could have disbelieved Ferrari's testimony that Cano would have seen Garcia with his high beams on. Alternatively, says Cano, the jury could have concluded that Garcia's own negligence was the sole proximate cause of his death.

The evidence of causation was conflicting. Dr. Post testified that Cano may have been checking his blind spot just before the collision. The jury could have concluded from that testimony that Cano would not have seen Garcia even with high beams, such that any Vehicle Code violation was not the cause of Garcia's death. There also was evidence that Garcia was negligent by driving under the influence, crashing his vehicle, and standing in a lane of freeway traffic. The jury could have concluded that Garcia's own negligence caused his death. The evidentiary conflict precludes us from determining that any section 24409 violation was, as a matter of law, the cause of Garcia's death.

For these reasons, we find no merit in plaintiffs' contention that the judgment must be reversed because the jury's no-negligence verdict was contrary to the law and the evidence. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528 [evidence did not compel finding in favor of appellant as a matter of law where the "case posed evidentiary conflicts"].)

B. Evidentiary Challenges

Plaintiffs also claim that a number of evidentiary rulings require that the judgment be reversed. In particular, they complain that the trial court committed error by excluding photographs of Garcia's body at the accident scene and videos depicting experiments carried out by plaintiffs' reconstruction expert, as well as by striking a portion of that expert's testimony on hearsay grounds. We determine that plaintiffs have not met their burden to show that the trial court's evidentiary rulings constitute reversible error.

Before addressing each evidentiary issue, we will provide an overview of the general rules that govern our appellate review and place certain burdens on appellants, as well as the applicable standard of review.

1. Basic Rules of Appellate Review and the Standard of Review

In conducting our appellate review, we presume that a judgment or order of a lower court is correct. "All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Therefore, a party challenging a judgment or an appealable order "has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) " 'A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.' [Citations.]" (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) Thus, where the appellant fails to provide an adequate record as to any issue the appellant has raised on appeal, the issue

must be resolved against appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.)

We may properly treat as abandoned arguments that are unsupported by citation to authority or by "any pertinent or intelligible legal argument." (*Berger, supra,* 163 Cal.App.3d at pp. 1119.) And we need not review issues that "will have no effect on the parties" before us. (*Kaiser Foundation Health Plan, Inc. v. Superior Court* (2012) 203 Cal.App.4th 696, 715-716.)

"We review a trial court's evidentiary rulings for abuse of discretion." (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 281 (*Shaw*).) This court has explained that "[d]iscretion is abused only when in its exercise, the trial court 'exceeds the bounds of reason, all of the circumstances before it being considered.' [Citation.] There must be a showing of a clear case of abuse *and miscarriage of justice* in order to warrant a reversal. [Citation]." (*Ibid.*, italics added.) The erroneous exclusion of evidence causes prejudice to appellant amounting to a " 'miscarriage of justice' " only if "a different result would have been probable if the error had not occurred." (*Zhou v. Unisource Worldwide, Inc.* (2007) 157 Cal.App.4th 1471, 1480; see also Cal. Const., art. I, § 13; Evid. Code, §§ 353, 354; Code Civ. Proc., § 475.) " 'Prejudice is not presumed, and the burden is on the appealing party to demonstrate that a miscarriage of justice has occurred. [Citations.]' [Citation.]" (*Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 58.) It likewise is appellant's burden to establish abuse of discretion. (*Shaw, supra,* 170 Cal.App.4th at p. 281.)

Having reviewed the basic rules of appellate review and the standard of review here, we turn to the evidentiary issues plaintiffs seek to raise on appeal.

2. The Photographs

The trial judge excluded numerous accident scene photographs showing Garcia's body pursuant to Evidence Code section 352, reasoning that—due to their gruesome nature—the photographs' probative value was substantially outweighed by the risk of undue prejudice. The court reasoned that, rather than showing the jury the photographs,

plaintiffs' counsel could elicit testimony from the experts describing the condition of Garcia's body. Plaintiffs argue the trial court erred in excluding these photographs. According to plaintiffs, the photographs "were conclusive evidence" that the collision with Cano, as opposed to the collision with Yi, caused Garcia's death.

We determine that plaintiffs have failed to carry their burden to show that the trial court's exclusion of the photographs constituted reversible error for two reasons. First, plaintiffs have not provided an adequate record showing reversible error as to the exclusion of the photographs. (*Ballard v. Uribe*, *supra*, 41 Cal.3d at p. 574.) Plaintiffs chose to provide us with their own appendix in lieu of a clerk's transcript, as permitted by Rule 8.124 of the California Rules of Court. That appendix fails to include copies of the photographs at issue. Because plaintiffs have not provided an adequate record on appeal, the issue must be resolved against plaintiffs. (*Maria P. v. Riles*, *supra*, 43 Cal.3d at p. 1295.)

We further note that, generally, a trial court does not abuse its discretion by excluding photographs that do "not add anything not already known to the jurors." (*Moreno v. Hawbaker* (1958) 157 Cal.App.2d 627, 636; see also *Akers v. Miller* (1998) 68 Cal.App.4th 1143, 1147 [court did not abuse its discretion by excluding gruesome autopsy photographs where it allowed "extensive testimony . . . regarding the condition of the bedsore as depicted in the photographs"].) The record indicates the photographs depict the condition of Garcia's remains following the accidents. But the jury heard testimony to that effect from Dr. O'Hara and Ferrari, including Ferrari's description of some of the photographs at issue. According to plaintiffs, the photographs show that the Cano collision was the fatal one. In that regard, the photographs appear to have been cumulative of Dr. O'Hara's testimony that the skull injury Cano's vehicle inflicted could not be survived.

Second, even assuming the photographs were improperly excluded, the error is not reversible absent a showing by plaintiffs of prejudice, meaning " ' "it is reasonably probable a result more favorable to [them] would have been reached absent the error. [Citations.]" [Citation.]' " (*Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1431-1432.) As noted above, the photographs were cumulative of other evidence. Therefore, their admission would not "have made any difference in the outcome," rendering any error harmless. (*Shaw*, *supra*, 170 Cal.App.4th at p. 282; see also *Diamond Springs Lime Co. v. American River Constructors* (1971) 16 Cal.App.3d 581, 603 [exclusion of documents that were cumulative of other evidence did not give rise to prejudice].)

3. The Videos

Plaintiffs argue that the trial court applied the incorrect legal standard to exclude three videos recorded by their accident reconstruction expert, Ferrari. The first video was recorded on the stretch of I-280 where the accidents occurred and, according to plaintiffs, was "not intended to be an accurate representation of the road conditions exactly as they existed on the night of the fatality," but to give the jury "an accurate representation of the features of the roadway that do not change, such as the curvature, elevation, number of lanes, and things of that nature." The court reserved ruling on the video's admissibility pending an Evidence Code section 402 hearing, expressing concerns that the lighting and traffic conditions differed too greatly from those on the night of the accidents.

Ferrari recorded the other two videos on a residential street in Oakland. In the videos, Ferrari turned on the headlights of a vehicle to show that the light was reflected back by the retroreflectors on the rear of a vehicle parked 300 feet away. In view of the apparent "lack of similarity" between the site in Oakland and the scene of the accident on the evening in question, the court reserved ruling on the admissibility of the Oakland videos pending an Evidence Code section 402 hearing. No hearing ever was held, and the jury saw none of the videos.

We conclude that plaintiffs' contention that the court erred with respect to the videos lacks merit for four reasons.

First, plaintiffs' contention regarding the videos is not properly before us because they do not identify a definitive ruling on the videos' admissibility. Our review of the record indicates the trial court reserved ruling on the videos pending an evidentiary hearing. But no hearing ever was held, and plaintiffs do not direct us to any actual ruling on the admissibility of the videos. They point only to the portion of the transcript in which the court *reserved* ruling on the videos. "The law is settled that before error may be predicated upon the failure of the trial court to receive evidence the party aggrieved must obtain a ruling from the trial court upon his offer of proof." (*McRay v. Winter* (1953) 118 Cal.App.2d 800, 804.) Because "the transcript on appeal does not disclose that [a] ruling [excluding the videos] was made," we will not entertain plaintiffs' objection. (*Rosenbloom v. Western Auto Transports, Inc.* (1953) 120 Cal.App.2d 335, 340.)

Second, plaintiffs failed to include copies of the videos in the record on appeal, thereby depriving us of an adequate appellate record. (*Ballard v. Uribe, supra*, 41 Cal.3d at p. 574.) Consequently, even if we were inclined to address plaintiffs' objection, we are unable to adequately review the issue and must resolve it against plaintiffs. (*Foust v. San Jose Const. Co., Inc.* (2011) 198 Cal.App.4th 181, 187.)

Third, even if the videos were excluded, plaintiffs abandoned their contention that the exclusion constituted error by failing to cite a single case supporting their argument that the trial court applied the incorrect legal standard. (*Berger, supra*, 163 Cal.App.3d at p. 1119.)

Finally, even assuming the videos were erroneously excluded, that error was harmless. Plaintiffs contend the videos were relevant to demonstrate that, with the use of high beams, Cano would have been able to see the reflectors on the back of Garcia's vehicle. But it is undisputed that when Cano reached the scene Garcia's vehicle was

facing northbound, with its rear reflectors facing away from Cano. Therefore, evidence regarding the efficacy of rear reflectors could not have altered the verdict with respect to Cano.

4. The Hearsay Ruling

Lastly, plaintiffs contend the trial court erred by striking Ferrari's testimony recounting a statement in a police report that Yi purportedly made to police. In that statement, Yi stated she saw taillights prior to hitting Garcia's car. Plaintiffs make no effort to explain how that ruling impacts this appeal, to which Yi is not a party. Nor can we conceive how it might. Even assuming Yi was referring to Garcia's taillights and assuming they remained illuminated after the Yi collision, Cano would not have seen the taillights—they were facing away from him because the collision with Yi's vehicle had spun Garcia's vehicle so it was facing oncoming traffic. "We decline to review [the] issue [because it] will have no effect on the parties." (*Kaiser Foundation Health Plan, Inc. v. Superior Court, supra*, 203 Cal.App.4th at pp. 715.)

IV. DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondent Cano.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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MÁRQUEZ, J.

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GROVER, J.